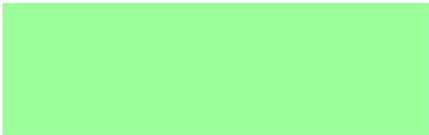




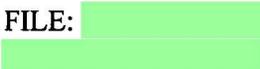
U.S. Citizenship
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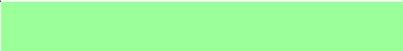
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DATE: Office: VERMONT SERVICE CENTER

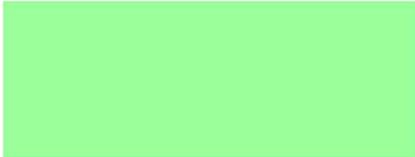
MAR 04 2013

FILE: 

IN RE: Applicant: 

APPLICATION: Application for Temporary Protected Status under Section 244 of the
Immigration and Nationality Act, 8 U.S.C. § 1254

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the Vermont Service Center. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of \$630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,



Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The applicant's Temporary Protected Status was withdrawn by the Director, Vermont Service Center. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant is a native and citizen of El Salvador who was granted Temporary Protected Status (TPS) under section 244 of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1254.

The director withdrew TPS because the applicant had been convicted of two misdemeanors in the United States.

On appeal, counsel argues the applicant's rights to due process was violated as he was not afforded sufficient time in which to secure clarifications of, or vacate his misdemeanor convictions. Counsel states that the applicant was not properly advised of the potential immigration consequences of a guilty plea.

The director may withdraw the status of an alien granted TPS under section 244 of the Act at any time if it is determined that the alien was not in fact eligible at the time such status was granted, or at any time thereafter becomes ineligible for such status. 8 C.F.R. § 244.14(a)(1).

An alien shall not be eligible for TPS under this section if the Secretary of the Department of Homeland Security finds that the alien has been convicted of any felony or two or more misdemeanors committed in the United States. See Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under the term "felony" of this section. For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 244.1.

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed. Section 101(a)(48)(A) of the Act.

On March 21, 2012, the director issued a notice requesting the applicant to provide certified judgment and conviction documents from the courts for all arrests. The applicant, in response, submitted:

1. Court documentation from the Recorder's Court of Gwinnett County Georgia, which indicates that on July 24, 1987, the applicant pled guilty to striking unattended

vehicle, a violation of Georgia Code section 40-6-271, a misdemeanor. The applicant was ordered to pay a fine.

2. Court documentation from Recorder's Court of Gwinnett County Georgia, which indicates that on October 27, 2009, the applicant pled guilty to driving under the influence with .08 or more alcohol, a violation of Georgia Code section 40-3-391(A)(5), a misdemeanor. The applicant was sentenced to serve time in jail, ordered to pay a fine and placed on probation for one year.

Although counsel argues that the applicant's right to due process was violated, he has not shown that any violation of the regulation or statute resulted in "substantial prejudice" to the applicant. *See De Zavala v. Ashcroft*, 385 F.3d 879, 883 (5th Cir. 2004) (holding that an alien "must make an initial showing of substantial prejudice" to prevail on a due process challenge). U.S. Citizenship and Immigration Services will not hold a decision in abeyance while an applicant seeks clarifications of or to vacate his misdemeanor convictions. A review of the record and the adverse decision indicates that the director properly applied the statute and regulations to the applicant's case. Accordingly, counsel's claim is without merit.

Convictions that have been vacated due to procedural or substantive defects in the underlying proceedings are no longer valid convictions for immigration purposes. *Matter of Adamiak*, 23 I&N Dec. 878 (BIA 2006). State rehabilitative actions that do not vacate a conviction on the merits are of no effect in determining whether an alien is considered convicted for immigration purposes. *Matter of Pickering*, 23 I&N Dec. 621 (BIA 2003), *Matter of Roldan*, 22 I&N Dec. 512, (BIA 1999).

The AAO may only look to the judicial records to determine whether the person has been convicted of the crime, and may not look behind the conviction to reach an independent determination concerning guilt or innocence. *Pablo v. INS*, 72 F.3d 110, 113 (9th Cir. 1995); *Gouveia v. INS*, 980 F.2d 814, 817 (1st Cir. 1992); and *Matter of Roberts*, 20 I&N Dec. 294 (BIA 1991).

To date, the applicant has not provided any credible evidence from the courts to support his assertion that he had not been advised of the possible immigration consequences of a guilty plea by the trial court. Simply going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)). The AAO concludes that the misdemeanor convictions continue to effect immigration consequences.

The applicant is ineligible for TPS due to his misdemeanor convictions. Section 244(c)(2)(B)(i) of the Act and 8 C.F.R. § 244.4(a). Consequently, the director's decision to withdraw TPS will be affirmed.

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An alien applying for TPS has the burden of proving that he or she meets the requirements enumerated above and is otherwise eligible under the provisions of section 244 of the Act. The applicant has failed to meet this burden.

ORDER: The appeal is dismissed.